Durrell v. Cook, No. 00-36049

McKeown, Circuit Judge, dissenting:

I respectfully dissent. No evidence suggests that defendants Cook, Armenakis, Lampert, and Heath were personally involved in Durrell's housing assignment and thus, the district court properly granted summary judgment in their favor. See Farmer v. Brennan, 511 U.S. 825, 834 (1994).

With respect to the remaining defendants, the most logical way to analyze the case is to affirm the district court on the ground that Durrell has not established an Eighth Amendment violation. See Saucier v. Katz, 533 U.S. 194 (2001) (requiring courts to determine, as a threshold matter, whether a constitutional right was violated). Alternatively, the remaining defendants are entitled to qualified immunity under Ford v. Ramirez-Palmer, 301 F.3d 1043, 1050 (9th Cir. 2002).[1] In Ford, we held that prison officials were entitled to qualified immunity based on their decision to house Ford with another inmate who was classified as a "predator" and who had an "extensive history of violent behavior toward inmates and staff, including eleven separate assaults, one of which involved stabbing an inmate seventeen times." Id. at 1051. Noting that the

[1]Although Ford did not address the first prong of Saucier with respect to establishing a constitutional violation, Ford's analysis directly contradicts the majority's approach here.

predatory inmate "had been successfully double-celled for years with other inmates" and had not been recommended for "single-celling" by the prison staff, we concluded that we "could not say that a reasonable officer would perceive that the risk of continuing to double-cell [the predatory inmate] would so high as to be constitutionally impermissible." Id. The same is true here. As in Ford, Durrell's cellmate had been double-celled with other inmates without incident for years before his assignment with Durrell, and prison officials did not know that he posed a danger to his cellmates. Despite the majority's assertion to the contrary, the evidence does not demonstrate that a "reasonable official" would have known, by looking at the prison's computerized database, that Durrell's housing assignment subjected him to harm. In fact, a declaration from a prison official states unequivocally that the database did not "indicate a recent history of special or outstanding problems . . . that would have indicated that [Durrell] should not have been housed" with the allegedly aggressive inmate. Accordingly, the evidence does not suggest that "a reasonable officer" would have known that Durrell's housing assignment "posed an excessive or intolerable risk of serious injury" and, the remaining prison official are entitled to qualified immunity. Ford, 301 F.3d at 1052.